UNITED STATES TAX COURT
WASHINGTON, DC 20217

HOFFMAN PROPERTIES II, L.P., FIVE M ACQ I, LLC, TAX MATTERS PARTNER,	)	
Petitioner,	)	
v.	)	Docket No. 14130-15.
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent	)	

O R D E R

By notice of final partnership administrative adjustment dated March 3, 2015, respondent disallowed a $15,025,463 deduction for a noncash charitable contribution (contribution) for the taxable year ending December 31, 2007, (year at issue) of petitioner Hoffman Properties II, L.P (Hoffman), and determined accuracy-related penalties under section 6662.[1] On May 29, 2015, Five M Acq. I, LLC (TMP), the tax matters partner for Hoffman, filed a petition for readjustment of partnership items under section 6226, challenging these determinations.

On August 5, 2016, respondent filed a Motion for Partial Summary Judgment, with respect to a portion of the contribution (respondent's first motion). On July 12, 2017, we issued an Order (first order) that granted respondent's first motion of August 5, 2016, and sustained respondent's disallowance of a deduction for a portion of the contribution for failure to comply with the requirements of section 170(h)(4)(B).

On August 11, 2017, pursuant to Rule 161, petitioner timely filed a motion for reconsideration with respect to our first order. On September 7, 2017, respondent filed his response objecting to petitioner's motion.

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[1]All section references are to the Internal Revenue Code (Code) and regulations in effect for the tax year at issue. All Rule references are to the Tax Court Rules of Practice and Procedure. All monetary amounts are rounded to the nearest dollar.

Background

Hoffman and TMP were formed and operate in the State of Ohio. Hoffman was formed as a partnership and is treated as such for Federal income tax purposes. At all relevant times, Hoffman[2] owned the Tremaine building (building) located at 1303 Prospect Ave., Cleveland, Ohio, as well as a pair of adjacent parking lots (adjacent lots) located at 1227 Prospect Ave., Cleveland, Ohio (collectively, the property).

On December 28, 2007, Hoffman conveyed to the American Association of Historic Preservation (AAHP) an easement deed agreement (agreement) encumbering specific aspects of the property. Hoffman's contribution comprised a set of use restrictions encumbering (1) the exterior of the building (the easement), and (2) the air space above the building and adjacent lots (the restriction).[3]

AAHP is a non-profit corporation organized under the laws of the State of Ohio, and at the time of the conveyance was a recognized section 501(c)(3) public charity with the purpose of furthering historic preservation.

The Agreement

The agreement contains a number of recitals recognizing both AAHP's nonprofit status and its eligibility to receive qualified conservation contributions under section 170(h). It also expresses the parties' mutual desire to provide the general public a significant benefit through preservation of the property's "open space features", and the building's exterior for purposes of historic preservation.

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[2]Whether directly or through its wholly owned subsidiary Prospect Ave Parking, LLC.

[3]On August 25, 2017, respondent filed a second Motion for Partial Summary Judgment (respondent's second motion), requesting summary adjudication with respect to the restriction portion of the contribution. On March 14, 2018, we issued an Order (second order) granting respondent's second motion and holding that Hoffman's restriction contribution failed to satisfy the perpetuity requirements of sec. 170(h)(5)(A) and sec. 1.170A-14(e) and (g), Income Tax Regs.

To achieve this end, the agreement grants AAHP the restriction, which restricts Hoffman's ability to develop or interfere with the property's air space.[4] In addition, the agreement grants AAHP the easement, which operates to restrict Hoffman's ability to alter or modify the exterior of the building.

The agreement, however, recognizes that Hoffman's contribution does not represent Hoffman's full interest in the property. In order to reconcile the restriction and easement with Hoffman's retention of the underlying property, the agreement establishes three tranches of rights with respect to Hoffman's continuing use of the property: (1) the unrestricted reserved; (2) the conditional or restricted; and (3) the expressly prohibited.

The Unrestricted Reserved Rights

Article 4 of the agreement establishes an explicit baseline. It provides Hoffman the absolute right to engage in all acts and uses that "do not substantially impair" the air space or the building's exterior, and "are not inconsistent with the purposes of" the agreement. The agreement's default rule provides that Hoffman may engage in all uses of the underlying property not expressly prohibited or otherwise restricted by the agreement, and deems that any use not so prohibited or restricted is consistent with the purposes of the agreement. With respect to these unrestricted rights, Hoffman's ability to act is unfettered and requires no prior notification to, or approval by, AAHP.

The Restricted, Conditional Rights

Article 3 of the agreement explicitly restricts Hoffman's right to make certain uses of the building's exterior and air space. In order to exercise any of its restricted rights, Hoffman must first seek and receive AAHP's permission to proceed.

If Hoffman wishes to exercise any of its restricted rights, the agreement requires Hoffman to provide AAHP a formal request for permission (RFP). The

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[4]The agreement defines "the Restriction" as the relinquishment of the "Air Space Development Rights". Air space development rights is a defined term encapsulating the "right to build any addition within the Air Space." Air space is defined as the "spaces * * * alongside the Building and above the roof of the building".

RFP must contain all plans, specifications, design drawings and schedules relevant to the restricted use Hoffman wishes to undertake. The agreement does not constrain the scope, scale, or character of work Hoffman may propose in such an RFP. The agreement also does not impose on Hoffman an affirmative duty to self-evaluate its RFP against any relevant standards prior to submitting its request to AAHP.

The agreement obliges AAHP to review any RFP submitted by Hoffman and, in doing so, requires AAHP to base its approval or rejection on an application of the "secretary's standards".[5]

The agreement provides AAHP a 45-day window to complete its review of any RFP and tender a formal disposition to Hoffman with respect thereto. If AAHP fails to expressly reject or approve Hoffman's RFP within this 45-day window, then a default rule (the 45-day default provision) provides that AAHP's failure:

> shall be deemed to constitute approval by Grantee [i.e., AAHP] of the plan or request as submitted and to permit Grantors [i.e., Hoffman] to undertake the proposed activity in accordance with the plan or request as submitted.

The Grant of Rights to AAHP

The agreement further provides AAHP with various rights, responsibilities, and obligations meant to advance the stated conservation purpose of the agreement. Notably, the agreement provides AAHP the authority to pursue any and all legal or equitable remedies against Hoffman, but only if Hoffman violates the agreement's terms.

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[5]The agreement defines "the Secretary's standards" in paragraph 3.3 as the "Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings," located at 36 C.F.R. sec. 67.7. Paragraph 2.3 of the agreement similarly, but more broadly, defines the Secretary's standards by reference to 36 C.F.R. sec. 67, generally.

Subsequent Events

On December 31, 2007, the agreement was recorded in Cuyahoga County, Ohio. On September 29, 2008, Hoffman claimed the contribution as a noncash charitable conservation contribution in the amount of $15,025,463 on its return for the year at issue.

On October 26, 2009, a representative from Hoffman contacted AAHP, requesting execution of an agreement purporting to be a "correction" to the easement. The agreement is titled "Public Law 109-280 'Special Rules' Compliance Agreement" (subsequent agreement), and purports to be a section of the easement that was "inadvertently deleted" just before signing. Exclusive of its recitals, the subsequent agreement's terms mirror near identically section 170(h)(4)(B)(i) and (ii) as they purport to protect the entire exterior of the building; prohibit any change to the building's exterior that would be inconsistent with the building's historical character; and certify--under penalty of perjury--that AAHP is a qualified easement-holding organization with the resources and commitment to manage and enforce the easement.

The subsequent agreement was executed by representatives of Hoffman and AAHP, but it was not recorded as an amendment to the easement.

Discussion

I. Reconsideration, Generally

Reconsideration under Rule 161 serves the limited purpose of correcting substantial errors of fact or law. Estate of Quick v. Commissioner, 110 T.C. 440, 441 (1998). The granting of a motion for reconsideration rests with the discretion of this Court. Vaughn v. Commissioner, 87 T.C. 164, 166 (1986). A motion for reconsideration is not the appropriate mechanism by to which reassert previously unsuccessful arguments or to present new legal theories. Bedrosian v. Commissioner, 144 T.C. 152, 156 (2015). Accordingly, the Court declines to grant motions for reconsideration absent a showing of unusual circumstance or substantial error. Id.; Estate of Quirk v. Commissioner, 928 F.2d 751, 759 (6th Cir. 1991), aff'g in part, remanding in part T.C. Memo. 1988-286.

II. Conservation Contributions

Section 170(a)(1) provides taxpayers a deduction for any charitable contribution made during the taxable year. Charitable contributions may include gifts of property to charitable organizations that are made with charitable intent and without the receipt, or expectation of receipt, of adequate consideration. Zarlengo v. Commissioner, T.C. Memo. 2014-161, at *18; see sec. 1.170A-1(h)(1) and (2), Income Tax Regs.

Section 170(f)(3)(A) disallows a deduction for noncash charitable contributions of property consisting of less than a donor taxpayer's entire interest in that property. The Code, however, provides an exception to this general rule for a taxpayer making a "qualified conservation contribution". Sec. 170(f)(3)(B)(iii). As pertinent here, a qualified conservation contribution must be made "exclusively for conservation purposes." Sec. 170(h)(1).

The contribution of an easement encumbering the facade of a certified historic structure, or other building located within a registered historic district may constitute a qualified conservation contribution. Sec. 170(h)(4)(A)(iv) and (C). The contribution of such an easement, however, "shall not be considered exclusively for conservation purposes unless" the contribution complies with the requirements of section 170(h)(4)(B)(i) (the preservation and prohibition requirement), and section 170(h)(4)(B)(ii) (the sworn statement requirement). Sec. 170(h)(4)(B) (emphasis added).

III. Hoffman's Positions

In our first order we recognized that the agreement's 45-day default period curtails AAHP's authority to prevent, or right to legally or equitably remedy, alterations or modifications to the building's facade that are inconsistent with the historical character of the building. Thus, we held that the terms of the agreement failed to satisfy the preservation and prohibition requirements of section 170(h)(4)(B)(ii).

Additionally, in our first order we recognized that the agreement's recitals and terms averred that AAHP constituted a qualified organization able and ready to enforce the easement. We also recognized, however, that the agreement lacked any sworn statement or other certification, made by Hoffman and AAHP, that would place the veracity of those representations under penalty of perjury. Accordingly, we held that, at the close of Hoffman's tax year at issue, Hoffman

had not satisfied the sworn statement requirement of section 170(h)(4)(B)(ii), and was therefore not entitled to a deduction for the year at issue.

Hoffman moves for reconsideration of both our holdings.

With respect to our preservation and prohibition holding, Hoffman argues that the agreement's shortcomings identified in, and informing our holding are irrelevant as the general public or the Attorney General of Ohio have the right to prevent Hoffman from altering or modifying the building's facade in a manner inconsistent with the building's historic character.[6]

With respect to our sworn statement holding, Hoffman alleges that the Court erred by: (1) failing to recognize that the notarization of the agreement constituted a statement or certification made under penalty of perjury sufficient to satisfy the sworn statement requirement; and (2) declining to exercise its equitable powers to reform the terms of the agreement in order to allow the terms of the subsequent agreement to retroactively perfect the shortcomings of the original agreement.

IV. Preservation and Prohibition

The contribution of an easement "shall not be considered to be exclusively for conservation purposes unless" the preservation and prohibition requirement is satisfied. Sec. 170(h)(4)(B) (emphasis added). The preservation and prohibition requirement requires that the terms of an easement contribution must contain restrictions that perpetually preserve the subject building's entire exterior and prohibit any change thereto inconsistent with that building's historical character. Sec. 170(h)(4)(B)(i); see sec. 170(h)(5)(A).

As discussed in our first order, the terms of the agreement are insufficient to ensure the perpetual preservation of the building's exterior, as required by section 170(h)(4)(B)(i). The agreement reserves to Hoffman a set of restricted rights, the

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[6]Hoffman additionally argues that the Court erred in interpreting the agreement terms. Specifically, Hoffman argues that we misinterpreted the operation of the restricted rights, and the 45-day default provision. Hoffman incorporated their argument, as presented in this motion for reconsideration, into its opposition to respondent's second motion. Accordingly, we decline to again address this particular portion of Hoffman's argument, and choose to incorporate our analysis and holding as detailed in our second order of March 14, 2018.

exercise of which Hoffman may only undertake when it submits to AAHP an RFP and receives AAHP's approval to proceed with that RFP. In addition to providing these general procedures, however, the agreement also contains the 45-day default provision. The 45-day default provision provides that, if AAHP fails to approve or reject Hoffman's RFP within 45 days, then Hoffman's RFP will be approved by default.

The agreement, in addition to providing AAHP the right to approve or reject Hoffman's RFPs, provides AAHP the right to seek legal and equitable remedies for Hoffman's breach of the agreement's terms.

In our first order, applying relevant Ohio law to interpret and harmonize the agreement's terms, we determined that the operation of the 45-day default provision curtailed AAHP's authority to prevent alterations and modifications to the building's exterior inconsistent with the historical character of the building, and similarly stripped AAHP of any legal or equitable right to remedy any such alteration. Accordingly, we held that the agreement failed to satisfy the preservation and prohibition requirements of section 170(h)(4)(B)(i), and that Hoffman was not eligible for a deduction under section 170(h) for the year at issue.

Nonetheless, Hoffman argues that, should the 45-day default period be construed as a waiver of AAHP's rights under the easement, then Ohio law operates to empower the people and Attorney General of Ohio to enforce the easement and prevent alterations and modifications to the exterior of the building inconsistent with its historic character. In support of this proposition Hoffman invites our attention to, *inter alia*, Ohio Rev. Code, secs. 109.23-33, and 1716.01, and associated Ohio case law. This body of law, generally, empowers the Ohio Attorney General to enforce, oversee, and administer charitable interests and nonprofit corporations. See Ohio Admin. Code 109:1-1-01(D)(2).

In making this contention, Hoffman's argument appears to misconstrue the holding of our first order. Our first order did not feature any finding, inference, or supposition that AAHP might waive, abdicate, or otherwise neglect to enforce or exercise its rights pursuant to the agreement. Rather, our first order held that, because of the 45-day default provision, the rights provided to AAHP pursuant to the agreement are insufficient to perpetually preserve and protect the building exterior as required by section 170(h)(4)(B)(i).

It is undisputed that AAHP constitutes a nonprofit corporation subject to the oversight and authority of the Ohio Attorney General. It is undisputed that Ohio

law empowers the Attorney General to initiate a suit to enforce the terms of this agreement, if AAHP neglects to enforce the rights and powers granted it therein. None of the Ohio law cited by Hoffman, however, states that the Ohio Attorney General's exercise of such powers imbue him with any greater right or dominion over a charitable interest, or property, than otherwise possessed by the erstwhile ineffective charitable organization. Thus, it is unclear why Hoffman believes that a hypothetical "enforcement" of the agreement by the Ohio Attorney General would somehow alter the scope and applicability of the legal and equitable rights granted through the agreement's terms.[7] See 1982 East, LLC v. Commissioner, T.C. Memo. 2011-84, slip op. at 17-19 (easement must provide a donee rights sufficient to protect the conservation purpose of the contribution, and the ability to enforce those rights); Gorra v. Commissioner, T.C. Memo. 2013-254, at *25-*28 (easement terms must provide the donee organization "the ultimate say" in alterations to the conservation property).

Accordingly, Hoffman has failed to persuade us that we erred in our first order, in holding that the terms of the agreement failed as a matter of law to satisfy the preservation and prohibition requirements of section 170(h)(4)(B)(i), and we affirm our grant of partial summary judgment on the grounds set forth therein.

V. Sworn Statement

A. Notarization

The contribution of an easement "shall not be considered to be exclusively for conservation purposes unless" the sworn statement requirement satisfied. Sec. 170(h)(4)(B) (emphasis added). To satisfy the sworn statement requirement, the donor-taxpayer and donee must "enter into a written agreement certifying, under penalty of perjury, that the donee" is a qualified organization with the resources to manage and enforce the easement, and a commitment to do so. Sec. 170(h)(4)(B)(ii).

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[7]We do not construe Hoffman's argument to suggest, or imply, that the terms of the agreement may be subject alteration pursuant to the doctrine of cy pres, and would otherwise reject an attempt to raise such an argument here as a new legal theory improperly raised for the first time within the context of a motion for reconsideration. Bedrosian v. Commissioner, 144 T.C. at 156.

As discussed in our first order, the agreement--signed by representatives of Hoffman and AAHP--contains language averring that AAHP was a qualified organization, with the resources and commitment to manage and enforce terms of the agreement. The agreement, however, lacked any language that would place the veracity and truthfulness of those representations "under penalty of perjury". In opposing respondent's first motion, Hoffman argued that a notary public's notarization of the agreement was sufficient to constitute a statement made under penalty of perjury, and was thus sufficient to satisfy the sworn statement requirement of section 170(h)(4)(B)(ii). In our first order we disagreed, determining that notarization is, generally, a means of preventing fraud and forgery, and authenticating documents. See e.g., Bartholemew v. Blevins, 679 F.3d 497, 502 (6th Cir. 2012); Fed. R. Evid. 902(8); Ohio Rev. Code, secs. 147.07 and 147.53. Accordingly, we rejected Hoffman's argument and sustained the disallowance of Hoffman's conservation contribution deduction for the year at issue.

In its motion for reconsideration Hoffman, again, argues that relevant law establishes that a signed and notarized agreement constitutes a statement or verification under "penalty of perjury", sufficient to satisfy the requirements of section 170(h)(4)(B)(ii). Hoffman argues that notarized statements are more authoritative and reliable than statements certifying that a document, and the representations therein, are made under penalty of perjury. Hoffman argues that, given the agreement's notarization, there was no need for Hoffman and AAHP to declare the agreement made under penalty of perjury, and that doing so would have been "superfluous."

We have reviewed the law provided by Hoffman, and determined that it is inapposite. Hoffman's proposition relies on cases where various courts have held that the authenticity or legal usefulness of particular documents could not be established absent notarization, notwithstanding the presence of a purported party signature declaring or otherwise verifying the truthfulness of the contents therein. In each of those cases, however, the documents at issue--primarily affidavits--are of the type whose authenticity and reliability as a record, or as evidence, is of particular concern. Under relevant law, affidavits are written declarations prepared under oath before a proper officer. See Toledo Bar Assn. v. Neller, 809 N.E.2d 1152, 1234-1236 (Ohio 2002) ("[A]n affidavit is 'a written declaration under oath'", and "Notaries public are of course the persons who most often administer the oaths that appear on affidavits"). Because a notary is considered such an officer and may administer such an oath, in those particular affidavit cases, notarization is required to authenticate and certify that the oath was administered

and the subject document was prepared thereunder. See Balimunkwe v. Bank of America, 2016 WL 75084, at *9 (S.D. Ohio 2016) (notarization is "conclusive evidence of the facts stated in the notary's certification"). Accordingly, in those particular affidavit cases, absent the requisite notarization confirming the document was prepared under oath, those documents failed to qualify as affidavits.

Section 170(h)(4)(B)(ii) establishes a baseline for taxpayers wishing to qualify for a conservation contribution deduction. The Code does not require the parties to provide an affidavit, to submit a written declaration prepared under oath. Instead, the Code requires that the parties make certain representations under penalty of perjury in a written agreement. See sec. 6065. Accordingly, there is no need for a notary to administer any oath, or to attest that the representations of the donor-taxpayer and donee were made thereunder. Presumably, should parties wish to comply with the sworn statement requirement by proffering a written declaration made under oath and notarized accordingly, such an affidavit may very well satisfy section 170(h)(4)(B)(ii). Hoffman, however, has neither alleged that the agreement was prepared and signed under oath, nor has Hoffman attempted to argue that any of the notaries' declarations and seals affixed to the agreement purport to testify as much.[8]

Accordingly, Hoffman has failed to show that this matter is not simply a rehashing of a previously rejected legal argument, or that the holding of our initial order was in error. Estate of Quick v. Commissioner, 110 T.C. at 441-442. Accordingly, reconsideration on this matter is inappropriate, and we affirm our

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[8]Patricia L. Lanser, a Notary Public of the State of Ohio, set her seal to the following statement on December 27, 2007, in the State of Ohio, the County of Summit:

> BEFORE ME, a Notary Public in and for said County and State, personally appeared AMERICAN ASSOCIATION OF HISTORIC PRESERVATION, an Ohio non-profit corporation, by Matthew A. Heinle, its Authorized Representative who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed individually and as such officer.
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> IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal* * *

Near-identical statements are affixed to the agreement by additional Notary Publics with respect to execution of the agreement by Hoffman and Citizens Bank.

grant of partial summary judgment with respect to the sworn statement requirement on the grounds set forth in our first order.

B. Reformation

In our first order we examined Ohio law to ascertain whether Hoffman had established a prima facie case for reformation. We observed that scrivener's error is a form of mutual mistake which may justify reformation. See Castle v. Daniels, 475 N.E.2d 149, 153 (Ohio Ct. App. Apr. 25, 1984) (Ohio applies the Restatement (Second) of Contracts, sec. 155 to evaluate matters of mutual mistake, scriveners error); see also ArcelorMittal Cleveland, Inc. v. Jewell Coke Co., L.P., 750 F. Supp. 2d 839, 846-847 (N.D. Ohio. 2010). We observed that under Ohio law, in order to establish mutual mistake, the parties must show that the terms embodied in a writing are materially at odds with the parties' identical intentions. See Restatement (Second) of Contracts, sec. 155; see also Riser Foods Co. v. Shoregate Props., LLC, 2011 U.S. Dist. LEXIS 100448 at *33-*38 (N.D. Ohio 2011). Materiality, in this context, relates to those contractual terms impacting the legal rights and obligations between the parties to the agreement. See Restatement (Second) of Contracts, sec. 155, cmts. a and e.

Notwithstanding Hoffman's desire to secure a conservation contribution deduction, we determined that the record failed to establish any fact indicating that the omission of language compliant with the sworn statement requirement from the agreement rendered the agreement materially defective. In other words, Hoffman failed to establish that this omission impacted the legal rights and obligations between Hoffman and AAHP, as established by the agreement. Accordingly, we declined Hoffman's invitation to reform the original agreement.

In its motion for reconsideration Hoffman again urges this Court to reform the agreement, and now argues that the tax benefits intended to arise from the agreement were material thereto. Hoffman argues that it would not have entered into the agreement but for its entitlement to a tax deduction, and that the absence of language satisfying the sworn statement requirement functions to deprive Hoffman of its desired benefit. Hoffman does not, however, explain how its inability to secure a desired tax benefit implicates materiality in this context, nor does Hoffman set forth any specific fact to establish that the legal rights and obligations between Hoffman and AAHP as established by the agreement are in any way impacted by the omission of the language contained within the subsequent agreement.

It is well settled that a taxpayer's expectations and desires as to the tax consequences of his or her transaction are not determinative, and that the tax consequences of a closed transaction are fixed. Belk v. Commissioner, T.C. Memo. 2013-154, at *12-*16; see Estate of Nicholson v. Commissioner, 94 T.C. 666, 674 (1990) (reformation of a closed transaction will not affect or unsettle the rights of non-parties, including the Federal Government). Accordingly, Hoffman has failed to show that reconsideration is appropriate.[9]

Upon due consideration, it is hereby

ORDERED that petitioner's Motion for Reconsideration, filed on August 11, 2017, is denied.

(Signed) Joseph W. Nega
Judge

Dated: Washington, D.C.
March 14, 2018

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[9]Hoffman argues in the alternative that, by way of the subsequent agreement, it substantially complied with the requirements of section 170(h)(4)(B)(ii). Substantial compliance is narrow equitable doctrine designed to avoid imposing a hardship upon a taxpayer who has done all they can reasonably do to, but have nevertheless failed to, satisfy the requirements of a statutory provision. Estate of Chamberlain v. Commissioner, T.C. Memo. 1999-181, aff'd, 9 F. App'x 713 (9th Cir. 2001). The Tax Court, generally, applies the doctrine of substantial compliance only when a taxpayer fails to comply with procedural or regulatory requirements, but nonetheless has managed to fulfill the requirements of the governing statute. Estate of Clause v. Commissioner, 122 T.C. 115, 122 (2004).

Application, here, of the doctrine of substantial compliance is inappropriate. The governing statutory language of sec. 170(h)(4)(B)(ii) is clearly and unambiguously mandatory. Sec. 170(h)(4)(B) provides that the donation of a conservation easement shall not be considered a qualified conservation contribution unless, and therefore not deductible until, the sworn statement requirement is satisfied. Hoffman and AAHP failed to comply with the sworn statement requirement at the time of the easement contribution. Accordingly, Hoffman failed to fulfill the requirements of the governing statute, and was not entitled to a qualified conservation contribution deduction for the year at issue.